

*For Leg
Charter + Gendell*

046
78-0213

MEMORANDUM FOR: [REDACTED]

DDA/EO

FROM :

[REDACTED]
Acting Director of Personnel

SUBJECT :

Charter Legislation, Title IV, Second Draft

This will confirm the Office of Personnel comments on subject legislation, telephoned to the AI/DDA office 30 January 1978.

1. Section 404(e) Page 5 - Termination Authority

This paragraph addresses the termination authority of the DCI and is new to Title IV. Our comments of 20 January in a memorandum to [REDACTED] on Section 108(m) of Title I, termination authority of the DNI, are applicable here, less the provision for the "Office of the Director". Attached is a copy of the proposed changes with explanatory notes. (Tab A)

To limit the termination authority to "national security" would, in effect, make the Agency subject to the competitive service rules for termination procedures in cases of surplus or for cause. While EO 9830 gives the head of agencies the authority to terminate for the "efficiency of the Service", there is an elaborate appeals system in the CSC which goes far beyond the Agency concerned. Such an appeals process would appear to be in conflict with the provisions of Section 406(g) page 12 (a new paragraph in this draft) which gives the Director the authority to protect names and numbers.

2. Section 406(a)(6) Page 10 - Appointment Authority

The same comments and revisions proposed in the informal note of 23 January 1978 for Section 408 a(6) apply here. A copy of the note with revisions and explanatory comments is attached (Tab B).

As this section is now written, the Director could not appoint the Inspector General, who is to be an EP V, as required by provisions in this Title. I would recommend we ask for authority to appoint EP IV level to permit filling the current EP level IV and V positions which Section 409 (c) appears to indicate would be transferred to the Director under this Act. If politically, we can't get the Level IV, we should at least have Level V authority to comply with the provisions of the Title itself. We understand other government agencies have Level IV and Level V positions with Head of Agency authority to appoint incumbents.

3. Section 409(c)(2) Page 17 - Limits New EP and SG Positions to Establishment by Law

This is the same wording as former Sec 407(c)(2) and we propose the same revisions as contained in our informal memorandum of 23 January, copy attached. (Tab B)

As written this paragraph would eliminate the Director's current authority to establish EP and Supergrade positions as required. The revisions are attempts to restore this authority, in whole or in part, e.g., the supergrades. Most agencies get their supergrade allocation from the Civil Service Commission though a few have special legislation which, of course, requires more legislation each time there is a need for additional positions.

4. Section 414(a)(1) Page 23 - Definition of "employees"

As noted in our original comments to the DDA on Section 417 of the original version of Title IV, the definition of "employees" is too limited. There are a number of individuals under contract to the Agency, with an employer/employee relationship as a result of their working arrangements and functions, who would be prohibited from receiving the benefits and allowances paid Agency staff employees often doing the same work. If this is meant, as suspect, to preclude the independent contractor from these benefits, the paragraph could be rewritten as drafted in attachment Tab C. This same paragraph



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We do not know the intent of the phrase "unless otherwise specifically indicated". It may be that the purpose of the phrase is to provide authority to include benefits and allowances in contracts; however, this would put these benefits back in discretionary mold, and it is our understanding that the individual who by working arrangements or function has an employee/employer relationship with the Agency is a government employee to all intents and purposes and is entitled to all related benefits.

A further note on Section 414. While it incorporates the wording provided by OGC for the various travel benefits and allowances, it omits the special paragraph on annual educational travel, the authority to sell property and use the funds obtained for similar purchases, and the authority to pay per diem during medical travel not involved with hospitalization. This was in the original draft of the travel regulations but has disappeared as we have gone through the various revisions. This is not a benefit provided in the FAMS, and perhaps if we get all the other provisions of the Title 22 travel benefits, we have to give this up.

5. Section 416, page 27 - Transfer of Personnel, Debits and Credits, et al

Section m 416(a) transfers the personnel employed by CIA on the day of enactment of the Act to the Director. There is no mention, other than in Section 409(c)(2) of the transfer positions; that section can be interpreted as being limited to the Executive Level and Supergrade positions. Hence we recommend this paragraph be revised to read as in Tab D.



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404(e) Title II
A. Proposed Revision of Section 108(m), Title I ~~and Sec~~

Notwithstanding any other provision of law, the Director may terminate the employment of any officer or employee of the Central Intelligence Agency ~~or the Office of the Director~~ whenever the Director considers such termination necessary or advisable in the interests of the United States. The termination of the employment of any officer or employee under authority of this paragraph shall not affect the right of such officer or employee to seek or accept employment elsewhere in the Government.

B. Alternative Proposal

Notwithstanding any other provision of law, the Director may terminate the employment of any officer or employee of the Central Intelligence Agency ~~or the Office of the Director~~ whenever the Director considers such termination necessary or advisable in the interests of the national security of the United States or the efficiency of the Agency or the Office of the Director. The Director shall report to the PSCI of the House of Representatives and the SCI of the Senate, in a timely manner, on any exercise of the Director's authority under this paragraph when invoked in connection with a major reorganization of the Agency or the Office of the Director. The termination of the employment of any officer or employee under authority of this paragraph shall not affect the right of such officer or employee to seek or accept employment elsewhere in the Government.

NOTES ON THE PROPOSED REVISION

1. In drafting these proposed revisions, we have assumed the phrase "Office of the Director" includes the personnel of the various staffs and offices of the ADNIs, such as NFAC, NITC. The proposed legislation, including current Title IV, does not make it clear that the staffs and offices of the ADNIs are also in the CIA, although there is no administrative legislation covering these personnel.

2. Executive Order 9830 gives to the heads of agencies the authority to remove, demote or reassign employees "in the competitive service whose conduct or capacity is such that his removal, demotion or reassignment will promote the efficiency of the Service". While CIA is not in the competitive service, the Director has comparable authority under current CIA statutes. He must have this same authority under any new legislation as an integral part of the responsibility for the personnel management of the Agency. To limit the termination authority to matters of national security would be so restrictive as to negate any possibility of separation for other reasons, such as cause, surplus, et al. Current procedures for termination for such reasons, e.g., to promote the efficiency of the Service, are described in the regulations of the Agency and provide for all normal hearing and appeal processes.

The first proposed revision of Section 108(m) is essentially the same wording as the current authority in Section 403c of Title 50 U.S.C.A. The second version would incorporate a modification of the proposed SCI wording with the addition of the authority in Executive Order 9830.

3. The SCI draft of the paragraph to require "timely" reporting of each termination to the Congress seems unnecessarily cumbersome, though it is undoubtedly a deliberate effort to have the Congress informed of the details of all terminations. This is not a requirement for other government agencies insofar as we can determine. As an alternative, if we have to give on some of these items, we propose the wording of the B version of the draft which would require a report only in cases of separation because of major reorganization situations. It is not intended to be a report of individual cases; but only of the management situation which results from reorganization.

4. We also recommend elimination of the requirement for a declaration of eligibility by the CSR for subsequent employment of a terminated employee by another government agency. This same provision is in the current Section 403c authority and may have been carried over from that version. Not all government offices or commissions require CSR certification, and we believe it can be safely assumed that a terminated employee will not be hired in another government agency unless eligible for such employment under whatever rules are applicable there.

PROPOSED REVISIONS IN TITLE IV

Section 407c(1) 409(c)(1)

Subject to the provisions of paragraph (2), the Director may appoint such other subordinate officials to assist him in the performance of his duties as he deems appropriate.

(Proposed revision of subparagraph (2))

A.

(2) Executive schedule positions within the Agency of Director, Deputy Director, General Counsel and Inspector General are authorized by law. In addition to the Executive Schedule equivalent positions and the Supergrade equivalent positions of grades GS-16, 17 and GS-18 transferred to the Agency under this Act, the Director may establish equivalent positions at executive pay level V and at grades GS-16, 17 and 18 as are necessary to conduct the business of the Agency.

B. Alternative

(2) Executive Schedule positions within the Agency of Director, Deputy Director, General Counsel and Inspector General are authorized by law. Executive Schedule equivalent positions in addition to those transferred to the Agency under this Act will be as authorized by law. The Director may establish, in addition to those equivalent Supergrade positions transferred to the Agency under this Act, Supergrade equivalent positions at grades GS-16, 17 and GS-18 as required to conduct the business of the Agency.

Section 403a(4) 406 (a)(6)

(Proposed change is underlined)

Appoint such personnel as it deems advisable, without regard to the provisions of Title 5, United States Code, governing appointments in the competitive services, and fix the compensation of such personnel without regard to the provisions of Chapter 51 and Subchapter II and III of Chapter 53 of that Title, relating to Classification and General Schedule and Executive Pay Rates, but at rates not in excess of the rate authorized for GS-18 by Section 5332 and for Executive Schedules Level IV by Section 5316 of that Title.

IV

5315

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Notes on the Revisions

1. The Agency at present has only two statutory Executive Schedule positions, the Director and Deputy Director. Certain other Agency positions are designated as positions to be compensated "at rates established for Level IV and Level V of the Federal Executive Salary Schedule". This designation was made in a 1964 memorandum of the Director pursuant to his authority under the CIA Act and other applicable laws. (OGC 76-5544 of 6 October 1976). The Agency, exempt from the Classification Act, also establishes its supergrade positions by authority of the Director. Section 5108 of Title 5 U.S.C.A. is the authority for the establishment of supergrade positions elsewhere in government except for NSA and FBI which are controlled by individual laws. Because the Agency EP and SG positions are not established under the provisions of the specific laws, they are termed "equivalent".

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4. The "B" or alternate revision would be a compromise if the SCI is firm on some control in this area of administration. It includes the Executive Schedule positions in the statutory requirements, but gives the Director control of the supergrade positions.

5. It is not clear from the SCI draft if the intent is to control the Executive Schedule positions by number or by title (and substance), listing them in Sections 5315 (Level IV) or 5316 (Level V) of Title 5, U.S.C.A. If the control is by number, there would be no case for claiming security. In this situation, it is presumed the positions would continue to be "equivalent"

Section 408a(6)

The title for Section 408, "Agency Powers" and the introductory sentence ". . . the Agency is authorized to . . ." seem an odd source for appointment of personnel. Normally this is an authority given to an individual, e.g., the Head of Agency, in CIA the Director.

The proposed revision of subparagraph (6) is edited to include authority for the Agency, or the Director, to appoint personnel and fix compensation at pay levels equivalent to EP V. We have assumed that if the ADNI's at Level IV requires Presidential appointment with advice and consent of the Congress, the Director's authority to appoint would necessarily be limited to Level V.

As drafted by the SCI this section provides no appointment authority for positions at EP level, although Section 407 states the Director may appoint the Inspector General--EP V.

TAB C

Proposed Revision of Sec 414(a)(1)

(1) the term "employee" means any person employed by the Agency, including persons working under contract in an employee/employer relationship, but does not include, unless otherwise specifically indicated, those self employed individuals under contract to the Agency as independent contractors or any persons who when hired are residents or are citizens of the foreign country in which the station at which such person is to be assigned to duty is located."

TAB D

Proposed Revision of Sec 416(a)

(a) All positions established in the Central Intelligence Agency
and all personnel employed by the Central Intelligence Agency, on the day
before the effective date of this . . ."

Comments from SSA/DDA

Section 417 (a)(1): should read "the term "employee" means any person employed by the Agency and more specifically defined by regulations prescribed by the DNI."

Section 417 (c)(3): We would like to eliminate or reduce the 60 day waiting period. It would increase significantly the adoption period and could result in a loss of a benefit (i.e., an employee might not risk a large expenditure for educational travel if the adoption might be disapproved). Clearly, the retroactive provision would not help in such a case.

Section 417 (d): This section should include the authority to use the proceeds from the sale of residential property for the purchase of other residential property (see attached).

(2) Any provisions of an Executive Order issued pursuant to this subsection shall modify, supersede or render inapplicable, as the case may be, to the extent inconsistent therewith--

(A) all provisions of law enacted prior to the effective date of the provisions of such Executive Order, and

(B) any prior provision of any Executive Order issued under authority of this section.

(d) Notwithstanding the provisions of subsections (b) and (c) of this section, and under regulations approved by the Director, the Agency may pay benefits in lieu of those specifically authorized, or may grant special quarters, cost-of-living and representation allowances and travel expenses when it is determined by the Agency that such are necessary for reasons of operational necessity or security; and Provided, that the Director, when he finds it in the interest of the Government, is authorized, with respect to residential property in foreign areas, to purchase, sell or exchange such property and the proceeds of the sale or disposition of such property may be used solely for the purchase of other residential property.

Office of Finance Comments on Title V

Page 9 - Section 406 (A)(1)

Place a period after the word "transferred" line 7.17 and leave out the remaining of the paragraph.

Page 11 - Section 406 (D)(2)

The Office of Finance suggests that Section 406 (D)(2) should not be included particularly disposition of a proprietary should not be referred to the Attorney General and Comptroller of the United States.

Page 14 - Section 408 (A)

This Section continues to reflect language which we infer contemplates possible multi-year appropriations. We believe it is important to continue to emphasize the cost effectiveness of conducting CIA activities under a one-year appropriation as has been done until now. As a matter of interest the House Appropriation Committee, in considering the FY 78 budget, proposed a division of the Agency budget into four accounts. The Agency's rationale in support of continuing with a single appropriation is reflected in the attached tab.

Office of Finance strongly urges wording that would limit us to annual appropriations.

Page 15 - Section 408(B) This can be interpreted to reflect a separate appropriation for confidential funds. We cannot live with separate appropriations. Please see the above paragraph covering comments on Section 408 (A).

OFFICE OF MEDICAL SERVICES COMMENTS ON TITLE V

Page 14 - Section 408 (a)(3) Line 10.18 and 10.19
states "Health Service Programs as authorized by Section
7901 Title V U.S. Code.

This is very restrictive and minimal.

Legislation should be introduced for all medical
program overseas to be the same. Ours should be the same
as State which goes by Title 22, U.S. code 1156-1158.

OC Comments on Title IV

Page 10, Para (12)

"perform such additional functions as are otherwise authorized by this Act for each entity of the intelligence community;"

Comment: [redacted] has talked with OLC stating he feels strongly a provision of this kind should remain.

Page 9, Section 406(a)(3)

"reimburse other departments and agencies for the services of personnel assigned or loaned to the Agency;"

Comment: Feels this statement is "uniquely one way." Suggested that either this phrase be eliminated, or that it be changed to "reimburse or receive reimbursement from...." -- it should be a two-way street.

Page 14, Section 408(a)(3), line 10.20

Comment: [redacted]

Would like to change "radio-receiving and radio-sending" to "communications-receiving and communications sending...."

Also, "telegraph and teletype equipment" is not needed and can be excluded.

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OS Comments on Title IV

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Basic reaction is that this Title does not give OS its fundamental investigative charter. Suggests it have some provision such as in the new Executive Order 12036, page 3680, 1-811, "Protect the security of its installations, activities, information and personnel by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the CIA as are necessary." Some language to this effect should be in Title IV.

The only other point is in regard to page 5, Section 404(e), starting at line 4.60: "The termination of the employment of any officer or employee under authority of this paragraph shall not affect the right of such officer or employee to seek or accept employment elsewhere in the Government if declared eligible for such employment by the U.S. Civil Service Commission."

Security is concerned that a person fired for security reasons could go elsewhere in the Government and get a job which would give him access to classified information.

OS would like to insert after "elsewhere in the Government" not involving access to classified intelligence information if declared eligible...."

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